

*United States Court of Appeals
for the Second Circuit*



**RESPONDENT'S
BRIEF**

76-4051

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

-against-

Docket No. 76-4051

ADAMS IRON WORKS, INC.,

Respondent.

MEMORANDUM OF LAW AND BRIEF FOR
ADAMS IRON WORKS, INC.

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P/S

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MEMORANDUM OF LAW AND BRIEF FOR
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STATEMENT
OF THE ISSUES PRESENTED

1. Whether substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8 (a), (5), (3) and (1) of the Act by failing to reinstate four unfair labor practice strikers to their former jobs immediately after their unconditional application to return to work.

2. Whether substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8 (a), (5) and (1) of the Act by refusing to honor and comply with the terms of the collective-bargaining agreement executed by its agent on May 29, 1974,

and an agreement to reinstate employee, John Mazzanti.

STATEMENT OF THE CASE

This case is before the Court upon application of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat.136, 73 Stat. 519,29 U.S.C., Sec. 151, et seq.), for enforcement of its order (A. 25-28, 30-33) issued against Adams Iron Works, Inc. (hereinafter the "Company"), on October 23, 1975. The Board's Decision and Order is reported at 221 NLRB No. 24.

FACTS

The Company is a small ironworking shop in Brooklyn, New York with fewer than ten employees (Petitioner's reference unless otherwise stated) (A.4; 156). The president and sole stockholder is Joseph Bonanno, a naturalized American citizen now 40 years of age who came to this country when he was 23 (A. 4; 174). In 1964, the Company signed its first contract with the Union (A. 4; Tr. 175). Its last contract with the Union expired on June 30, 1973. On July 2, 1973, the Union struck and commenced picketing the Company's shop (A. 4, 66; 158, 161, 177). The picketing continued until late in May 1974 (A. 4; 89, 137).

In October 1973, a charge was filed with the Board alleging that the Company had engaged in conduct violative of Section 8(a), (5) and (1) of the Act (A. 4, 57).

In March 1974, Union President William Colavito met with Jack D'Angelo at a coffee shop not far from the Company's plant (A. 6, 88, 89, 92, 93-94, 120). D'Angelo described himself as a friend of Bonanno. He told Colavito that he wanted to help Joseph Bonanno with the labor dispute. D'Angelo thought it would be best for Bonanno to remain out of the initial discussions (A. 6; 95). At this meeting, which took place across from Pisa Catering Hall wherein Jack D'Angelo was employed in Bay Ridge, Brooklyn, New York, discussion took place about the amount of Union members to be employed by Adams. D'Angelo reminded Colavito that the Company was an insignificant operation with poor immigrant Italians trying to make a living and that attempts to affix Union requirements on this Company would put them out of business. At all times D'Angelo indicated that he was not in any manner connected with the Company. The testimony is replete with respect to this proof. No evidentiary proof was produced by the Petitioner either documentary or oral that D'Angelo was more than a friend of Joseph Bonanno.

All of the comments in paragraph B, pages 4, 5, 6, 7, 8, and 9 of Petitioner's Brief failed to establish authority in D'Angelo, either implied or expressed. The balance of the testimony as identified by Petitioner is totally inconclusive as to agency. Part of the testimony will appear in this Memorandum of Law and Brief to sustain this position.

POINT I

THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE FINDING THAT THE COMPANY VIOLATED SECTION 8(a), 5, 3 and 1 of the NATIONAL LABOR RELATIONS ACT.

The legal doctrine de minimis applies to this whole proceeding. The proof is clear and the Petitioner concedes that the Respondent had employed two persons other than strikers for a very short period of time. Thereafter, the Company employed two of the strikers who subsequently were let go because of lack of work and, further, the Company ceased active business for the balance of 1975 because of the strike and the fact that the president of the Company, Joseph Bonanno, having been stabbed (by a person in the strike group who thereafter was, on information and belief, arrested and pleaded guilty to some form of assault) was unable, because of this occurrence and ill health, to

perform the heavy work which he had previously done in this little operation. The entire operation died a normal death with dissolution, which was filed and accepted by the State of New York in early January, 1976. Joseph Bonanno, the president of the Company, was on medical disability and could not continue in business and is now medically retired under social security with a very serious heart condition, rendering it impossible for him to even do the slightest work. His diagnosis is an "extensive coronary arterio disease due to apprehension, anxiety and fear."

The de minimis doctrine of the matter is the fact that the claim of the employees or the Petitioner is of no consequence, even if admitted, which the Respondent does not admit.

POINT II

THE PROOF IS TOTALLY LACKING TO ESTABLISH
ANY AGENCY ON THE PART OF JACK D'ANGELO
TO EXECUTE A CONTRACT WITH THE UNION.

The law supporting the above point is supported by hosts of cases. In the case of OLD MAN MAJU BOILER WORKS vs. OCEAN & INLAND TRANSPORT, 205 N.Y.S. (2d) 550; 210 App. Div. 183, it was held that one dealing with an alleged agent has the burden of proving agency and the right to

negotiate does not give rise to the right to sign instruments. It is substantially very clear that in major labor-management negotiations numerous attorneys and individuals negotiate but only responsible officers of the corporation and the Union executed the instruments. Any other result would spell havoc both for the Union and for management. It is additionally for this reason that after the instruments are executed, appropriate acknowledgments are likewise executed so that the authenticity of the signatures are without question. In the Contract offered in evidence herein, no acknowledgment of the signature of Jack D'Angelo was obtained nor did he sign in any official capacity and lacking capacity, he could not bind the Respondent corporation. It is also interesting to note that Jack D'Angelo by his own testimony admitted that he had no capacity at any time to sign a binding instrument on behalf of the Respondent Company and that he was neither an officer, stockholder nor a director of the Company and without authority to sign or represent the Respondent Company in any capacity. The irrefutable testimony is set forth herein verbatim from the official report of proceedings before the National Labor Relations Board in Docket No. 29 CA 3968, taken on

December 18, 1974 commencing with page 201 and concluding
on line 17 of page 206, as follows:

Q Schonfeld is who?

A Schonfeld is a friend of mine besides being an attorney that I use in a different kind of business, in Playland, he owns Playland and we went out to look at the Playland near Rockaway Turnpike and that is why.

Q On this particular day; is that right?

A That's right.

Q In the meantime you met with the Union people, right?

A Yes.

Q And they got together and then you went over into the coffee shop; is that correct?

A Yes.

Q Who went into the coffee shop?

A We all did, excluding Joe Bonanno, the same people I mentioned before.

Q Did his lawyer come later?

A I didn't even know it was his lawyer.
He came in on a motorcycle.
They sat on another table.

Q And these gentlemen were there?

A Yes, they sat with us.

Q Did you talk with them about Joe's business conditions?

A Yes, we discussed the whole thing with them and we stayed about a half hour.

We had a sandwich as well and then we went away.

He couldn't very well give me much answers.

He said he would let me know the next time we come together.

I told him what I would want and he said it is a lot of things impossible, couldn't be done and I said well, the guy can't stay in business, he will wind up closing up.

So he says well, a lot of people say that but there is nothing we can do, we have to go by the law of the Union and this is what we have to do.

Q Then thereafter did you speak to Joe about this generally or specifically?

A Joe asked me a few times and I said to him there is nothing to tell you.

They said the next time they come they will tell me everything and I will give you an answer then.

Q Did they deliver some contracts to Schonfeld, if you know?

A Well, I'm not, I can't swear to it.

I'm not -- nothing that I seen except that when we were sitting at the table, that is the second meeting which was May 29th.

Q 28th or 29th?

A No, it was the 29th because I know I'm off on a Wednesday and it was a Wednesday.

That is how I know I was sitting there listening to you, but it is May 29th, on a Wednesday.

We discussed the different articles of the contract.

Q Was this gentlemen there?

A No, not at all, neither was --

Q Was he aware of the meeting?

A No, he wasn't, but for the simple reason that I figure let's not tell him anything, he gets all nervous and when I got everything together then I will tell him.

So I didn't tell him a thing about it.

We sat down, Mr. Colavito, we discussed the Saturday and we discussed how many men would work with the mechanic and so forth.

And I said is there anything else?

He said no, that is all.

There are these paragraphs that Joe is really worried about, so I said okay.

So he took out some typewritten paper and I says "Is this the whole contract?"

He says "No, I didn't bring the whole contract. I brought part of it."

"These are where the articles are" and as a matter of fact he underlined the paragraphs, different words in the paragraphs that cover the Saturday where he said it would give time and a half instead of double time, and again about -- I'm not too familiar with that kind of work, but again as far as how many mechanics to a laborer and so forth.

Q So what further happened"

A So after we read the whole thing.

Q These are these pages that he brought?

A Yes, then he said to me that, he said "Would you sign it?"

I said "I'm not an officer."

He said "Well, it don't make any difference," he said. "We have been arbitrating this a long time," he said, "At least show something."

I said but I'm not an officer, so I turned around to Schonfeld and I said "Schonfeld, I'm not."

He says "I know you are not an officer."
So I signed it.

Q You didn't sign your name as corporate
officer, you just signed your name?

A I just signed it.

Q The corporation's name wasn't even written,
just Adams; is that correct?

A I don't recall, I don't recall that.

Q At any time were you ever given written or
oral authority to sign contracts on behalf of
this corporation?

A No.

Q Did you ever sign a check on behalf of this
corporation?

A No.

Q Did you ever sign any instruments, any
notes, anything on behalf of the corporation?

A Nothing.

Q You were not an officer, director or stock-
holder of this corporation?

A No.

Q Were you at any time ever an officer,
director or stockholder?

A No.

Q Did you ever tell these men that you were
authorized to sign?

A No.

Q Did you tell them that you weren't authorized to sign?

A No. That I wasn't?

Q Yes.

A I didn't say nothing.

I told them that I'm not an officer, that's all I told them.

MR. FERLAINO: That is all.

JUDGE MULLIN: Mr. Schonfeld's first name is George?

THE WITNESS: No.

MR. BLYER: I think the testimony was Joel.

CROSS-EXAMINATION

Q (By Mr. Blyer) Who is George?

A He's a friend of mine from Florida who comes up for a few weeks and drove us down there.

Q Mr. D'Angelo, it was your testimony that you turned to Mr. Schonfeld on May 29th after telling Mr. Colavito that you were not an officer and that you told Mr. Schonfeld you were not an officer and he agreed with you?

A Yes.

Q Then you signed the contract?

A Yes.

POINT III

A UNION DEALING WITH AN AGENT IS BOUND
AT ITS PERIL TO INQUIRE AND ASCERTAIN
THE EXTENT OF THE AGENT'S AUTHORITY
ESPECIALLY SO WHERE IT IS A SPECIAL
AGENCY.

The above enunciated principle of law is fundamental throughout the case law. This principle was set forth in EVERDELL vs. CARRINGTON, 139 N.Y.S. 119; 154 App. Div. 500. In the present case it is more than obvious from the testimony that Union officials were dealing with Jack D'Angelo, a friend of the President of the respondent Company. It is clear from the testimony that Joseph Bonanno was an immigrant who speaks English haltingly and cannot read or write English; that he and Jack D'Angelo were neighbors in Staten Island and that Jack D'Angelo was trying to fill in the language barrier gap and nothing more. The Union had seasoned negotiators receiving a salary from their Union. It was a favor that Jack did for Joseph Bonanno. We are not dealing with a Transit Workers Union negotiating with the Port of New York Authority with tens of thousands of employees with seasoned negotiators. We are dealing with an English speaking manager of a catering hall (Jack D'Angelo) who tried to help a friend (Joseph Bonanno) in the iron works business with some two to ten employees. As Jack D'Angelo

said in his testimony, and it is not refuted on re-direct examination by Mr. Colavito and Mr. Schifano, that, on Page 206, lines 17 through 21:

Q After he agreed with you that you were not an officer why did you sign it?

A Because they wanted to show that there was a meeting, for the simple reason that this thing had to be accurate for a long time, it's been laying around."

and again, Jack D'Angelo thought that he was signing to show that there was a meeting and that was the reason why he signed it. (See Page 207, lines 2 through 4.)

The law is very clear as to special agency and so it was held in DELAFIELD vs. ILLINOIS, 2 Hill 159, 26 Wend. 192, affirming judgment 8 Paige 527, holding that those who deal with an agent whose authority is limited to special purpose are bound, at their peril, to know the extent of his authority. So also it was held in MILLER vs. BARNETT, 144 N.Y.S. 40; 158 App. Div. 862, that one negotiating with an agent is put on guard as to the agent's authority, and again it was held that one dealing with a salesman is chargeable with notice that he has no authority to contract to deliver goods in exchange for advertising. BECK vs. DONAHUE, 57 N.Y.S. 741; 27 Misc. Rep. 230.

A principal will not be bound by act of his agent in excess of the agent's actual authority, where party doing business with agent knows extent of authority or where circumstances are such as to put him upon inquiry as to power and good faith of agent. ANGEROSA vs. WHITE CO., 290 N.Y.S. 204; affirmed 275 N.Y. 524. This latter case is on all fours with the case at bar and the Union was fully cognizant that D'Angelo was nothing more than a friend helping a person who spoke English poorly, and perforce was aware of the circumstances and should have inquired as to the power and good faith of the agent. This the Union failed to do and the action should be dismissed with respect to the execution of the Contract as binding on the respondent, there being no Contract executed by the parties, there is no violation of the National Labor Relations Board.

POINT IV

NO PROOF HAS BEEN PRESENTED AS TO UNFAIR
LABOR PRACTICES UNDER SECTION 8 (a), (3)
or 8 (a) (5).

From the reading of the testimony and the proof before the Board there is not one iota of proof of violation by the respondent of the above sections of the law. The Union and the Board failed to produce one witness who

requested re-employment. There was no proof that work was available and consequently the case in this respect must fail.

POINT V

THE JUDGMENT SHOULD BE REVERSED AND ALL
PROCEEDINGS DISMISSED.

Respectfully submitted,

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Dated: August 2, 1976

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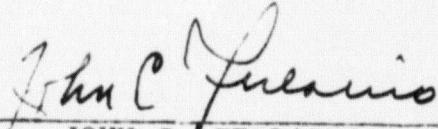
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the Respondent's Memorandum of Law and Brief have this day been served upon the following counsel at the address listed below:

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